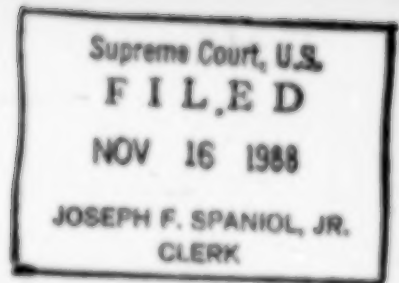


No. **88-266**

3



**In The**  
**Supreme Court of the United States**  
**OCTOBER TERM, 1988**

**OKLAHOMA TAX COMMISSION, PETITIONER,**

**v.**

**JAN GRAHAM, et al., RESPONDENT.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE TENTH CIRCUIT**

**JOINT APPENDIX**

Stanley J. Alexander \*  
David Allen Miley  
Assistant General Counsels  
Oklahoma Tax Commission  
2501 Lincoln Boulevard  
Oklahoma City, OK 73194-0011  
(405) 521-3141

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Post Office Box 726  
Hugo, OK 74743  
(405) 326-6427

**COUNSEL FOR PETITIONER**

**COUNSEL FOR  
RESPONDENTS**

**\* Counsel of Record**

Petition for Certiorari Filed August 5th, 1988  
Certiorari Granted October 3rd, 1988

83/172

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

|  |   |              |
|--|---|--------------|
| State of Oklahoma, <i>ex rel</i>       | ) |              |
| Oklahoma Tax Commission                | ) | Plaintiff    |
|  | ) |              |
| vs.                                    | ) | No. 85-663-C |
|  | ) |              |
| Jan Graham and Chickasaw Nation        | ) |              |
| by and through Overton James, Governor | ) | Defendant    |
| of the Chickasaw Nation                | ) |              |

**PETITION FOR REMOVAL**

To:   The Honorable Judges of the United  
      States District Court for the Eastern  
      District of Oklahoma.

1. The petitioners, Chickasaw Nation of Oklahoma and Jan Graham are the defendants in the above entitled matter.

2. On the 13th day of October, 1985, the above entitled action was commenced against petitioners herein in the District Court of Murray County, Oklahoma entitled "State of Oklahoma, *ex rel* Oklahoma Tax Commission v. Jan Graham and Chickasaw nation, by and through Overton James, Governor of the Chickasaw Nation, No. C-85-223 seeking temporary and permanent injunctive relief to prevent the petitioners from conducting bingo games and selling untaxed tobacco products on Tribal Trust properties. Copies of the pleadings filed in said case are hereto attached.

3. The above entitled action is a civil action which this court has jurisdiction under 28 U.S.C. 1331 and is one that may be removed to this court pursuant to the provisions of 28 U.S.C. 1441, in that:

- (a) Petitioner, Chickasaw nation of Oklahoma is a federally recognized and protected tribe of Indians whose principal offices are situated in Ada, Oklahoma. Petitioner, Jan Graham, is an employee of the tribe.
- (b) The plaintiff in the State Court action herein above set forth

is attempting to interfere with the tribe's right to self government and its rights to sovereign immunity from suits in state courts.

- (c) This action rises out of the constitution, laws and treaties of the United States and requires a determination of whether the courts of the State of Oklahoma may exercise jurisdiction over the Chickasaw Nation and its employee's in the conduct of the Tribe's affairs and self government without the consent of the tribe and the United States Congress.

4. Pursuant to 28 U.S.C. 1446 and Rule 25, Rules of the United States District Court for the Eastern District of Oklahoma, petitioners present and file herewith a bond with good and sufficient surety in the amount of \$500.00 conditioned that petitioner will pay all costs and disbursements incurred by reason of the removal proceedings sought, should it be determined that the above entitled action was improperly removed.

5. This petition is filed with this court within 30 days after this cause became removable.

Wherefore, Petitioners pray that the above entitled action be removed from the District Court of Murray County, Oklahoma to this Honorable Court.

Date this the 22th day of October, 1985.

KILE AND RABON  
P.O. Box 726  
Hugo, Oklahoma 74743

Attorneys for Petitioners

By Bob Rabon

Certificate of Service Omitted in Printing

IN THE DISTRICT COURT OF MURRAY COUNTY  
STATE OF OKLAHOMA

State of Oklahoma, *ex rel* )  
Oklahoma Tax Commission, )  
Plaintiff )

vs. )

Case No. C-85-223

Jan Graham and Chickasaw Nation )  
by and through Overton James, Governor )  
of the Chickasaw Nation, )  
Defendant )

PETITION

COMES NOW the State of Oklahoma, *ex rel* the Oklahoma Tax Commission, and for its cause of action against Earl d. Guinn and the Chickasaw Nation, hereinafter called Defendants, alleges and states as follows:

(1) The Defendant, Chickasaw Nation, operates a business within Murray County, Oklahoma, located at 1001 West First Street, Sulphur, Oklahoma, said business is known as The Chickasaw Motor Inn and Restaurant.

(2) Defendant, JAN GRAHAM is the manager of the Chickasaw Motor Inn and Restaurant.

(3) Since on or about August 23, 1985, in the operation of said business, the Defendants have sold and continue to sell at retail a large quantity of cigarettes to the general public upon which State taxes have not been paid by reason of the Defendants' refusal to affix cigarette excise tax stamps to the individual packages of cigarettes in violation of State law, 68 O.S. §§306, 316. Defendants have also failed and refused to collect or remit State sales taxes on the sale of said cigarettes as required by State law, 68 O.S. §1354, 1361.

(4) The Defendants have failed and refused to file any reports with the Oklahoma Tax Commission regarding the receipt of unstamped cigarettes and the sale of cigarettes as is required by State law, 68 O.S. §§312, 1362.

(5) Since on or about November 1, 1984, in the operation of



said business, the Defendants have operated and continue to operate bingo games upon which State sales taxes have not been paid on the gross receipts from said games by reason of the Defendant's failure and refusal to collect and remit sales taxes in violation of State law, 68 O.S. §1354, 1361.

(6) The Defendants have failed and refused to file complete and accurate reports with the Oklahoma Tax Commission concerning its gross receipts from the operation of The Chickasaw Motor Inn and restaurant as required by State law. 68 O.S. §1365.

(7) The claim of the State for taxes is in danger of being lost or rendered uncollectible by reason of dissipation or concealment of the property by the Defendants, thereby causing irreparable harm and injury to the Plaintiff.

(8) The actions of the Defendants constitute a continuing violation of the statutes herein cited, which violation constitutes irreparable injury to the State and its citizens, for which Plaintiff is entitled to temporary and permanent injunctions.

WHEREFORE, Plaintiff prays for an order against said Defendants, their agents, servants and employees:

(1) Permanently enjoining and restraining them from receiving or selling within the State untaxed and unstamped cigarettes in violation of the laws of the State of Oklahoma;

(2) permanently enjoining and restraining them from operating bingo games on which State sales taxes are not collected in violation of the laws of the State of Oklahoma;

PLAINTIFF FURTHER PRAYS for an Order against said Defendants, their agents, servants and employees:

(1) Preliminarily enjoining them from possessing or selling, within this State, untaxed and unstamped cigarettes in violation of the laws of the State of Oklahoma until all taxes, penalties and interest are paid in full to the State of Oklahoma in connection with the receipt and sale of said cigarettes; and, until such reports as are required by State law have been filed; and, until a hearing can be held on the Plaintiff's request for a permanent injunction;

(2) Preliminarily enjoining them from conducting bingo games on which State sales taxes are not collected and remitted on the gross proceeds therefrom until a hearing can be held on the Plaintiff's request for a permanent injunction.

(3) Preliminarily enjoining them from conducting any business

at The Chickasaw Motor Inn and Restaurant until complete and accurate reports are filed with, and taxes paid to, the Oklahoma Tax Commission as required by State law.

PLAINTIFF FURTHER PRAYS that an Order of the Court be granted forthwith, against said Defendants, their agents, servants and employees temporarily restraining them from selling untaxed and unstamped cigarettes, and from conducting any bingo games upon which State sales taxes are not collected and remitted on the gross proceeds therefrom in violation of the laws of the State of Oklahoma, until a hearing can be held on the Plaintiff's request for a preliminary injunction.

STATE OF OKLAHOMA, ex rel  
OKLAHOMA TAX COMMISSION

J. LAWRENCE BLANKENSHIP  
GENERAL COUNSEL

BY: Robert C. Jenkins

Robert C. Jenkins, OBA #4641  
Attorneys for Plaintiff  
2501 N. Lincoln Boulevard  
Oklahoma City, OK 73194  
(405) 521-3141

Verification Omitted in Printing  
Summons issued to Defendants Omitted in Printing

IN THE DISTRICT COURT OF MURRAY COUNTY  
STATE OF OKLAHOMA

|  |   |                   |
|--|---|-------------------|
| State of Oklahoma, <i>ex rel</i>       | ) |                   |
| Oklahoma Tax Commission,               | ) |                   |
| Plaintiff,                             | ) |                   |
|  | ) |                   |
| vs.                                    | ) | Case No. C-85-223 |
|  | ) |                   |
| Jan Graham and Chickasaw Nation        | ) |                   |
| by and through Overton James, Governor | ) |                   |
| of the Chickasaw Nation,               | ) |                   |
| Defendants.                            | ) |                   |

TEMPORARY RESTRAINING ORDER

On the 18th day of October, 1985, the Plaintiff State of Oklahoma, *ex rel* Oklahoma Tax Commission filed a verified Petition in the District Court of Murray County, State of Oklahoma, alleging that the Defendants, their agents, servants and employees have sold and continue to sell a large quantity of cigarettes to the general public in Murray county, Oklahoma upon which State taxes have not been paid; and further alleging that the Defendants, their agents, servants and employees have operated and continue to operate bingo games on which sales taxes have not been collected and remitted to the Oklahoma Tax Commission, and, asking that the Defendants, Jan Graham and Chickasaw Nation, be temporarily enjoined from selling untaxed and unstamped cigarettes and from conducting any bingo games upon which State sales taxes are not collected and remitted on the gross proceeds therefrom, in violation of the laws of the State of Oklahoma, until a hearing can be held on the Plaintiff's request for a preliminary injunction; and it appearing that the said Plaintiff will suffer irreparable damage and injury unless the said Defendants are restrained forthwith and without notice:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendants, Jan Graham and Chickasaw nation, their agents, servants and employees are hereby temporarily restrained and enjoined from selling unstamped and untaxed cigarettes, and from operating any bingo games upon which State sales taxes are not collected and remitted on the gross proceeds therefrom, in violation of the laws of

the State of Oklahoma until the Court can consider the Plaintiff's request for a preliminary injunction;

IT IS FURTHER ORDERED that a hearing on the Plaintiff's request for a preliminary injunction will be held on the 1st day of November, 1985, at 9:00 o'clock a.m. in the Murray County Courthouse, at which time the Defendants may appear to show cause, if any, why they should not be preliminary enjoined and restrained as prayed for in Plaintiff's Petition.

Dated the 18th day of October, 1985.

/s/ Stanley Anderson  
JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

|  |   |              |
|--|---|--------------|
| State of Oklahoma, <i>ex rel</i>       | ) |              |
| Oklahoma Tax Commission,               | ) |              |
| Respondent [Plaintiff],                | ) |              |
|  | ) |              |
| vs.                                    | ) | No. 85-663-C |
|  | ) |              |
| Jan Graham and Chickasaw Nation        | ) |              |
| by and through Overton James, Governor | ) |              |
| of the Chickasaw Nation,               | ) |              |
| Petitioner [Defendant].                | ) |              |

MOTION TO REMAND

COMES NOW the State of Oklahoma, *ex rel.*, Oklahoma Tax Commission, and respectfully requests this Court to remand the above styled cause against the Respondent, pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted and Rule 12(b) (1) of the Federal Rules of Civil Procedure for lack of jurisdiction over the subject matter. Grounds for this Motion are more fully set forth in the memorandum brief accompanying this Motion.

Respectfully submitted,

STATE OF OKLAHOMA, *ex rel.*,  
OKLAHOMA TAX COMMISSION

J. LAWRENCE BLANKENSHIP  
General Counsel

By: Robert C. Jenkins  
Robert C. Jenkins, OBA #4641  
Attorney for Respondent  
2501 Lincoln Boulevard  
Oklahoma City, Oklahoma 73194  
(405) 521-3141

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

|  |   |              |
|--|---|--------------|
| State of Oklahoma, <i>ex rel</i>       | ) |              |
| Oklahoma Tax Commission,               | ) | Respondent   |
|  | ) | [Plaintiff], |
|  | ) |              |
| vs.                                    | ) | No. 85-663-C |
|  | ) |              |
| Jan Graham and Chickasaw Nation        | ) | Petitioner   |
| by and through Overton James, Governor | ) | [Defendant]. |
| of the Chickasaw Nation,               | ) |              |

MOTION TO DISMISS

Comes now the defendant and pursuant to Rule 12 (b) of the Rules of Civil Procedure for the United States District Court and respectfully moves the Court to dismiss the action for the lack of jurisdiction.

Kile and Rabon  
114 N. Second St.  
Hugo, Okla. 74743

Attorneys for Defendants

By: Bob Rabon

Order of the United States District Court for the Eastern District of Oklahoma denying motion to remand entered on February 27, 1986 is printed in the petition for certiorari at page A-25.

Order of the United States District Court for the Eastern District of Oklahoma granting motion to dismiss entered on February 27, 1986 is printed in the petition for certiorari at page A-27.



Order of the United States District Court for the Eastern District of Oklahoma denying motion for new trial entered on March 27, 1986 is printed in the petition for certiorari at page A-31.

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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|                                     |   |             |
|-------------------------------------|---|-------------|
| State of Oklahoma, <i>ex rel.</i> , | ) |             |
| Oklahoma Tax Commission,            | ) |             |
| Appellant,                          | ) |             |
|                                     | ) |             |
| v.                                  | ) | No. 86-1655 |
|                                     | ) |             |
| Jan Graham, <i>et al.</i> ,         | ) |             |
| Appellee.                           | ) |             |

---

TWO DEEDS ATTACHED TO OKLAHOMA TAX COMMISSION'S  
OPENING BRIEF WHICH WAS FILED IN THE TENTH CIRCUIT  
COURT OF APPEALS ON AUGUST 6, 1986

## DEED

THE STATE OF TEXAS )  
 ) KNOW ALL MEN BY THESE  
 COUNTY OF TRAVIS ) PRESENTS

THAT the ECONOMIC DEVELOPMENT ADMINISTRATION, United States Department of Commerce, Main Commerce Building, Washington, D.C., for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the undersigned paid by the Grantee herein named, the receipt of which is hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto the CHICKASAW NATION OF OKLAHOMA, all of the following described real property in Murray County, Oklahoma, to-wit:

All of Lots Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Twenty-nine (29), Thirty (30), Thirty-one (31), Thirty-two (32), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), Thirty-seven (37), and Thirty-eight (38), in Block One Hundred Fifty-six (156), in the City of Sulphur, Oklahoma, according to the Re-Subdivision thereof, Murray County, Oklahoma;

and the following described personalty situated and being in Murray County, Oklahoma, to-wit:

All furnishings, fixtures, machinery and equipment including, but not limited to, desks, chairs, tables, beds, televisions and radio sets, office machines, cash registers, kitchen equipment and supplies, linens, etc., used in connection with the operation and maintenance of the Sulphur Community Inn, Inc., d/b/a Artesian Motor Hotel.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in

anywise belonging, unto the said Chickasaw Nation of Oklahoma and its assigns forever; and the undersigned does hereby bind itself, its usccessors and assigns to warrant and forever defend all and singular the said premises unto the said Chickasaw Nation of Oklahoma and its assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this 24th day of August A.D., 1972.

ECONOMIC DEVELOPMENT ADMINISTRATION  
 United States Department of Commerce

By: Millard K. Neptune  
 Millard K. Neptune  
 Regional Director  
 Southwestern Regional Office

Acknowledgment Omitted in printing.

**WARRANTY DEED****KNOW ALL MEN BY THESE PRESENTS**

*That The Chickasaw Nation of Oklahoma, P.O. Box 1548, Ada, OK 74820 of Pontotoc County, State of Oklahoma, party of the first part, in consideration of the sum of Ten and No/100 ----- Dollars, in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto The United States of America in Trust for the Chickasaw Nation party of the second part, the following described real property and premises, situated in Murray County, State of Oklahoma, to wit:*

*Lots 11, 12, 13, 14, 15 and 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 in Block 156, City of Sulphur, Oklahoma, according to the Re-Subdivision thereof.*

*together with all improvements thereon and appurtenances thereunto belonging, and warrant title to the same, subject to any valid, existing lease or right-of-way thereon.*

*It being understood that the hereinabove described lands are purchased pursuant to the provisions of Section 5 of the Act of June 18, 1934 (48 Stat. 984), and Section 1 of the Oklahoma Act of June 26, 1936 (49 Stat. 1967), and said lands are non-taxable to the extent therein provided.*

*To have and to hold said described premises unto the said party of the second part, and assigns, forever free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages, and other liens and encumbrances of whatsoever nature.*

*Signed and delivered this 23 day of August, 1985*

Witnesses:

**Bill Anoatubby**

Lieutenant Governor, Chickasaw  
Nation

**Overton James**

Governor, Chickasaw Nation

**Robert R. Stephens**

Chairman, Chickasaw Tribal  
Legislature

Acknowledgment omitted in printing

The Opinion of the United States Court of Appeals for the Tenth Circuit entered on June 26, 1987 is printed in the petition for certiorari at page A-9.

18

The Order of the Supreme Court of the United States entered on December 7, 1987 is printed in the petition for certiorari at page A-8.

19

The Opinion of the United States Court of Appeals for the Tenth Circuit entered on May 18, 1988 is printed in the petition for certiorari at page A-1.



The Constitution of the Chickasaw Nation is printed in the brief opposing certiorari at page App. 1.

The Chickasaw Nation Gaming Act is printed in the brief opposing certiorari at page App. 29.